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9
10 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. 2013- 708

13 **NAN M. BUDGE,**
AKA NAN MURPHY BUDGE
14 **668 Edgewater Drive**
San Marcos, CA 92078

A C C U S A T I O N

15 **Registered Nurse License No. 403144**

16 Respondent.

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18
19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
22 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
23 Consumer Affairs.

24 2. On August 31, 1986, the Board of Registered Nursing issued Registered Nurse
25 License Number 403144 to Nan M. Budge, also known as Nan Murphy Budge (Respondent).
26 The Registered Nurse License was in full force and effect at all times relevant to the charges
27 brought herein and will expire on May 31, 2014, unless renewed.

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1 duties of the licensee in question, the record of conviction of the crime shall be
2 conclusive evidence of the fact that the conviction occurred, but only of that fact,
3 and the board may inquire into the circumstances surrounding the commission of
4 the crime in order to fix the degree of discipline or to determine if the conviction is
substantially related to the qualifications, functions, and duties of the licensee in
question.

5 As used in this section, "license" includes "certificate," "permit,"
6 "authority," and "registration."

7 9. Section 2761 of the Code states:

8 The board may take disciplinary action against a certified or licensed
9 nurse or deny an application for a certificate or license for any of the following:

10 (a) Unprofessional conduct, which includes, but is not limited to, the
following:

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12 (f) Conviction of a felony or of any offense substantially related to the
13 qualifications, functions, and duties of a registered nurse, in which event the
record of the conviction shall be conclusive evidence thereof.

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15 10. Section 2762 of the Code states:

16 In addition to other acts constituting unprofessional conduct within the
17 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct
for a person licensed under this chapter to do any of the following:

18 (a) Obtain or possess in violation of law, or prescribe, or except as
19 directed by a licensed physician and surgeon, dentist, or podiatrist administer to
20 himself or herself, or furnish or administer to another, any controlled substance as
21 defined in Division 10 (commencing with Section 11000) of the Health and
Safety Code or any dangerous drug or dangerous device as defined in Section
4022.

22 (b) Use any controlled substance as defined in Division 10 (commencing
23 with Section 11000) of the Health and Safety Code, or any dangerous drug or
dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or
24 in a manner dangerous or injurious to himself or herself, any other person, or the
public or to the extent that such use impairs his or her ability to conduct with safety
25 to the public the practice authorized by his or her license.

26 (c) Be convicted of a criminal offense involving the prescription,
27 consumption, or self-administration of any of the substances described in
subdivisions (a) and (b) of this section, or the possession of, or falsification of a
28 record pertaining to, the substances described in subdivision (a) of this section, in
which event the record of the conviction is conclusive evidence thereof.

1 (d) Be committed or confined by a court of competent jurisdiction for
2 intemperate use of or addiction to the use of any of the substances described in
3 subdivisions (a) and (b) of this section, in which event the court order of
4 commitment or confinement is prima facie evidence of such commitment or
5 confinement.

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7 11. Section 2765 of the Code states:

8 A plea or verdict of guilty or a conviction following a plea of *nolo*
9 *contendere* made to a charge substantially related to the qualifications, functions
10 and duties of a registered nurse is deemed to be a conviction within the meaning
11 of this article. The board may order the license or certificate suspended or
12 revoked, or may decline to issue a license or certificate, when the time for appeal
13 has elapsed, or the judgment of conviction has been affirmed on appeal or when
14 an order granting probation is made suspending the imposition of sentence,
15 irrespective of a subsequent order under the provisions of Section 1203.4 of the
16 Penal Code allowing such person to withdraw his or her plea of guilty and to enter
17 a plea of not guilty, or setting aside the verdict of guilty, or dismissing the
18 accusation, information or indictment.

19 REGULATORY PROVISIONS

20 12. California Code of Regulations, title 16, section 1444, states:

21 A conviction or act shall be considered to be substantially related to the
22 qualifications, functions or duties of a registered nurse if to a substantial degree it
23 evidences the present or potential unfitness of a registered nurse to practice in a
24 manner consistent with the public health, safety, or welfare. Such convictions or
25 acts shall include but not be limited to the following:

26 (a) Assaultive or abusive conduct including, but not limited to, those
27 violations listed in subdivision (d) of Penal Code Section 11160.

28 (b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to
Section 290 of the Penal Code.

13 13. California Code of Regulations, title 16, section 1445 states:

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15 (b) When considering the suspension or revocation of a license on the
16 grounds that a registered nurse has been convicted of a crime, the board, in
17 evaluating the rehabilitation of such person and his/her eligibility for a license
18 will consider the following criteria:

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- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (6) Evidence, if any, of rehabilitation submitted by the licensee.

COST RECOVERY

14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

FIRST CAUSE FOR DISCIPLINE

(May 16, 2012 Conviction for Driving Under the Influence On September 27, 2010)

15. Respondent has subjected her license to disciplinary action under Code sections 490 and 2761, subdivision (f), in that she was convicted of a crime that is substantially related to the qualifications, functions, and duties of a registered nurse. The circumstances are as follows:

a. On May 16, 2012, in a criminal proceeding entitled *The People of the State of California v. Nan Murphy Budge*, in Ventura County Superior Court, Government Center, Hall of Justice, case number 2010034722, Respondent was convicted on her plea of guilty to violating Vehicle Code (VC) section 23152, subdivision (a), driving under the influence of alcohol (DUI), a misdemeanor. Charges for violation of VC section 23152, subdivision (b), driving with a blood alcohol content (BAC) of 0.08 percent or more, with an allegation that Respondent's BAC was .15 percent or more, a sentencing enhancement pursuant to VC section 23578, Penal Code (PC) section 273a, subdivision (b); child endangerment and VC section

1 12500, subdivision (a), unlicensed driver, misdemeanors, were dismissed pursuant to a plea
2 bargain.

3 b. As a result of the conviction, Respondent was sentenced to 36 months
4 formal probation and ordered to serve two days in the Ventura County Jail, with credit for two
5 days served. Respondent was also ordered to pay fees and fines, and attend and complete a first
6 conviction drinking driver program.

7 c. The facts that led to the conviction are that on September 27, 2010,
8 Respondent was driving with a child in her car at 95 miles per hour along Highway 101 in
9 Ventura, California. An officer on duty from the Department of California Highway Patrol
10 observed the speeding vehicle and made an enforcement stop. During the enforcement stop,
11 Respondent smelled of alcohol, had watery eyes, and her speech was slurred. Respondent also
12 admitted to having two drinks earlier. Respondent failed the field sobriety tests (FST) that were
13 explained by the officer. Respondent consented to the drawing of a blood sample and was
14 thereafter booked into the Ventura County Jail.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Unprofessional Conduct - Use Of Alcohol in a Dangerous Manner)**

17 16. Respondent has subjected her licenses to disciplinary action under Code section
18 2762, subdivision (b), in that on September 27, 2010, as described in paragraph 15, above, she
19 used alcoholic beverages to an extent or in a manner that was potentially dangerous and injurious
20 to herself and to others when she operated a motor vehicle with a significantly high BAC.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Unprofessional Conduct - Conviction Of an Alcohol Related Criminal Offense)**

23 17. Respondent has subjected her licenses to disciplinary action under Code section
24 2762, subdivision (c), in that on May 16, 2012, as described in paragraph 15, above, Respondent
25 was convicted of criminal offenses involving the consumption of alcohol.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct – Confinement Due to Intemperate Use of Alcohol)**

3 18. Respondent has subjected her licenses to disciplinary action under Code section
4 2762, subdivision (d), in that on September 28, 2010, Respondent was committed to the custody
5 of the Ventura County Jail, as described in paragraph 15, above, for intemperate use of alcohol.

6 **PRAYER**

7 WHEREFORE, Complainant requests that a hearing be held on the matters herein
8 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

9 1. Revoking or suspending Registered Nurse License Number 403144, issued to Nan
10 M. Budge, also known as Nan Murphy Budge;

11 2. Ordering Nan M. Budge to pay the Board of Registered Nursing the reasonable
12 costs of the investigation and enforcement of this case, pursuant to Business and Professions
13 Code section 125.3;

14 3. Taking such other and further action as deemed necessary and proper.

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17 DATED: March 4, 2013 *Louise R. Bailey*
18 *for* LOUISE R. BAILEY, M.ED., RN
19 Executive Officer
20 Board of Registered Nursing
21 Department of Consumer Affairs
22 State of California
23 Complainant
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